

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 7, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2025AP1894-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2023CF1249

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AJAY GREGORY PIERANGELI,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County:
ANTHONY G. MILISAUSKAS, Judge. *Affirmed.*

Before Lazar, P.J., Gundrum, and LoCoco, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Ajay Gregory Pierangeli appeals from a judgment of conviction entered on his guilty plea to two counts of homicide by intoxicated

use of a vehicle. He contends the circuit court erred in denying his motion to suppress the results of a blood draw, which motion claimed law enforcement lacked probable cause to believe he had operated a vehicle while intoxicated and no exigency supported the warrantless blood draw. For the following reasons, we affirm.

BACKGROUND

¶2 Pierangeli was the driver of a vehicle that, shortly before 3:25 a.m. on July 28, 2023, left the roadway and crashed into the side of a building, resulting in the deaths of two passengers, injuries to two other passengers, and significant injury to himself. The results of a blood draw taken by the hospital in the course of treating Pierangeli indicated he had a blood alcohol concentration level of .282. Pierangeli filed a motion to suppress the results of a second blood draw, which hospital staff had performed pursuant to law enforcement directive. The circuit court held an evidentiary hearing on the motion at which the following relevant evidence was presented.

¶3 A police officer who had responded to the crash testified that an ambulance driver at the scene informed him that just moments before the crash, the ambulance driver had been stopped near the suspect vehicle at a stoplight. While stopped, the rear passenger on the driver's side "was hanging out the window and ... blowing kisses at him" and "doing some other types of unusual things." After the vehicle took off from the stoplight, the ambulance driver observed it "swerve[] multiple times," travel at a high rate of speed, "kind of bec[o]me airborne" at one point, "swerve[] left and then swerve[] right" before "run[ning] off the road" "towards the building." On cross-examination, the officer stated he did not recall

the ambulance driver indicating that he had observed an odor of alcohol coming from the driver, Pierangeli.

¶4 Another officer testified that he was at the scene of the crash and eventually was tasked with following the ambulance transporting Pierangeli to the hospital. At the hospital, the officer asked staff to procure the now-disputed blood sample from Pierangeli, which they did. At the time of the request, the officer was aware that two of the passengers had been killed in the crash. The officer did not attempt to obtain a search warrant for the blood draw.

¶5 On cross-examination, the officer indicated he did not recall anyone at the scene expressing an observance of an odor of alcohol coming from Pierangeli and confirmed that prior to requesting that hospital staff draw Pierangeli's blood, no witness had described Pierangeli to him as being impaired. The officer stated, however, that he "was aware that there was erratic driving [and] some sort of behavior indicating that potentially the occupants of the vehicle [could] be under the influence." He agreed Pierangeli was unconscious at the hospital and that he requested the blood draw "almost immediately" after arriving there because he believed he "didn't have time to obtain a [s]earch [w]arrant or the personnel to do it." He stated, "If I had the opportunity, I would have applied for a [s]earch [w]arrant." The officer testified that he was "under the impression that [Pierangeli] was going to get Flight for Life [and] was going to need a lot of medical procedures and we needed to get the blood before anything was to happen." He further testified that although hospital staff had drawn Pierangeli's blood for its own treatment purposes, he was not aware of that fact until after he had requested that they do so for law enforcement purposes.

¶6 The officer acknowledged that it takes approximately 25 to 30 minutes to obtain a search warrant, explaining that to apply for a warrant in this instance, he would have had to go to his squad car, download the warrant, fill it out, submit it, and then wait. When asked if he could have left the proximity of Pierangeli because Pierangeli was unconscious and “wasn’t going anywhere,” the officer responded, “I needed to stay in close proximity to him just to make sure that there weren’t any medications or anything like that being introduced to him because of his condition.” The officer acknowledged there were other officers at the hospital “during this general timeframe,” but he did not know the specifics of just when they were there. On redirect examination, the officer agreed that Pierangeli began receiving medical care “almost immediately upon arrival” at the hospital.

¶7 A sergeant testified that while at the scene of the crash, he had told the officer who ended up following the ambulance to the hospital that the officer needed to “stay with” Pierangeli and have a blood draw done. The sergeant explained that he had

been involved in a lot of crash investigations. And given the severity of this one, the totality of the circumstances at the scene and the critical injuries involving fatalities, it was my belief that any medical intervention, be it blood loss or injury or the hospital giving him life saving drugs, et cetera, that we had to critically get this blood before we lost that evidence.

When asked if there was any particular significance about the crash occurring at the time that it did, the sergeant responded, “Yeah, a lot of my time is spent on third shift. And historically around that’s the time we call time post bar close have some sort of impairment involving alcohol or drugs [sic].” When asked if he himself or “any other officers were able to get in really close proximity to any of the individuals inside the vehicle,” the sergeant responded, “Not that I recall, no.”

¶8 On cross-examination, the sergeant confirmed that before Pierangeli had ever been transported from the scene of the crash, the sergeant had made the decision that a blood draw should be procured, based on exigent circumstances as opposed to a search warrant, and agreed that he communicated this decision at that time to the officer who followed the ambulance to the hospital. The sergeant explained that Pierangeli had agonal breathing at the scene, “[s]o I knew that he was not conscious. And in my experience when there is agonal breathing, if it’s not a heroin overdose, it’s typically indicative of someone who is critical and near death.” He agreed that the decision to have a blood draw done based on exigent circumstances was his and his alone, adding, “if there is any possibility that our evidence can get altered or lost” due to hospital staff’s treatment of a suspect, “I am going to preserve it.” “In addition,” he added, “if there is a need for a blood transfusion [and] we are getting someone else’s blood in the system that’s going to dilute or modify results you are going to get.”

¶9 The sergeant acknowledged that prior to deciding to order a blood draw based upon exigent circumstances, he was not aware of any person describing Pierangeli as impaired or intoxicated. While he stated that he could not “speak to ambulance policies and procedures,” when asked if he was aware “in a case like this especially with an unconscious driver there would be efforts made en route to the hospital in terms of IVs and things like that,” the sergeant responded, “Sure. They are going to intervene.”

¶10 A “paramedic [l]ieutenant” with the Kenosha Fire Department testified that he responded to the crash in which “[t]he vehicle had protruded pretty deeply into a concrete block structure.” He treated Pierangeli, who was unconscious but breathing and had a strong pulse. The lieutenant “brought him to the rescue squad and continued treatment,” including administering “normal saline,” “a needle

decompression” for his lung, and “respirations with a bag valve mask.” He explained that the saline is a sodium solution “to keep the vein open when we administer an IV.” He indicated that no other medication was given to Pierangeli at that time. The lieutenant and others transported Pierangeli to the hospital Flight for Life, but Flight for Life “had aborted due to weather conditions,” so they took him to the emergency room. The lieutenant testified that while he did not smell alcohol emitting from Pierangeli while working near his hip area at the scene, a crew member working near Pierangeli’s head had stated that Pierangeli “smelled of alcohol.”

¶11 When asked on cross-examination whether either he or the crew member “communicate[d] to [l]aw [e]nforcement any allegation [of alcohol smell] coming from Mr. Pierangeli,” the lieutenant responded, “I personally don’t recall, no.” He agreed he did not “administer any substance to Mr. Pierangeli that might have a meaningful impact on his BAC level” and further indicated he “c[ouldn’t] imagine” an IV saline solution would. He agreed that Pierangeli presented “with all of the symptoms of a single collapsed lung,” which he considered “very serious.” The lieutenant agreed on redirect examination that Pierangeli “remained unconscious the entire time.”

¶12 The circuit court denied Pierangeli’s suppression motion, and he now appeals.

DISCUSSION

¶13 Pierangeli insists the circuit court erred in denying his suppression motion, asserting that “law enforcement officers lacked a sufficient basis to invoke the exigent circumstances exception to the Fourth Amendment” warrant requirement. (Formatting altered.) We conclude the court did not err.

¶14 “The review of a circuit court’s order granting or denying a suppression motion presents a question of constitutional fact. We will uphold the court’s factual findings unless they are clearly erroneous, but we independently apply constitutional principles to those facts.” ***State v. Mitchell***, 2022 WI App 31, ¶9, 404 Wis. 2d 103, 978 N.W.2d 231 (citation omitted). The ***Mitchell*** case provides us clear direction for this appeal.

¶15 In ***Mitchell***, we noted that the previous, “key” holding from the United States Supreme Court in that very case was that

[w]hen police have probable cause to believe a person has committed a drunk-driving offense and the driver’s unconsciousness or stupor requires him to be taken to the hospital or similar facility before police have a reasonable opportunity to administer a standard evidentiary breath test, they may *almost always* order a warrantless blood test to measure the driver’s BAC without offending the Fourth Amendment.

Id., ¶10 (alteration in original; quoting ***Mitchell v. Wisconsin***, 588 U.S. 840, 857 (2019) (plurality opinion)). We observed that

[t]he only circumstance in which police may not order the test without offending the Fourth Amendment—the “*almost always*” part of the holding—is where *the motorist* shows both that (1) his/her blood “would not have been drawn if police had not been seeking BAC information,” and (2) “police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties.” [***Mitchell***, 588 U.S. at 857] (emphasis added); see ***State v. Richards***, 2020 WI App 48, ¶29 n.4, 393 Wis. 2d 772, 948 N.W.2d 359 (“***Mitchell***’s holding that a defendant must ‘show’ [these two factors] places the burden on [the defendant] to establish those factors.”).

Mitchell, 404 Wis. 2d 103, ¶10.

¶16 Drawing further from the United States Supreme Court’s decision in ***Mitchell***, we noted that the Court

stated that an OWI-motorist’s unconsciousness

does not just create pressing needs; it is *itself* a medical emergency. It means that the suspect *will have to be* rushed to the hospital ... not just *for the blood test* itself but *for urgent medical care*. Police *can* reasonably anticipate that ... [the driver’s] blood may be drawn anyway, for diagnostic purposes, immediately on arrival.

Mitchell, 404 Wis. 2d 103, ¶12 (alteration in original; quoting ***Mitchell***, 588 U.S. at 854-55 (plurality opinion)). We further observed that the Supreme Court “stated that where there is probable cause to believe an unconscious person has operated a vehicle while intoxicated, the person ‘will have to be’ rushed to a hospital for a ‘blood test’ *and* ‘urgent medical care.’” ***Mitchell***, 404 Wis. 2d 103, ¶12 (quoting ***Mitchell***, 588 U.S. at 855). We summarized the “clear guidance” from the Supreme Court’s decision as it “relate[s] to all OWI motorists who are unconscious,” and that is that

taking such motorists to the hospital and performing a warrantless blood draw is reasonable and constitutional, and the related blood test will not be suppressed unless the motorist later shows both “that his blood would not have been drawn if police had not been seeking BAC information” and “that police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties.”

Id. (quoting ***Mitchell***, 588 U.S. at 857 (plurality opinion)).

¶17 Based on the foregoing, as relevant to this case, our ***Mitchell*** decision teaches that we first ask if law enforcement had probable cause to believe Pierangeli was operating a motor vehicle while intoxicated and thus can properly be considered an “OWI-motorist.” See ***id.*** If so, because he was unconscious, the warrantless blood draw at the hospital was “reasonable and constitutional, and the related blood test will not be suppressed,” unless he has shown “both ‘that his blood would not

have been drawn if police had not been seeking BAC information,’ *and* ‘that police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties.’” *See id.* (emphasis added; citation omitted).

¶18 We first consider whether at the time of the blood draw law enforcement had probable cause to believe Pierangeli had been operating a motor vehicle while intoxicated. The probable cause determination turns on whether the totality of the circumstances within the officer’s knowledge would lead a reasonable officer to believe the suspect probably committed a crime. *State v. Kutz*, 2003 WI App 205, ¶11, 267 Wis. 2d 531, 671 N.W.2d 660. “It is only necessary that the information lead a reasonable officer to believe that guilt is more than a possibility.” *State v. Paszek*, 50 Wis. 2d 619, 625, 184 N.W.2d 836 (1971). The undisputed evidence convinces us law enforcement had probable cause to believe Pierangeli had committed the offense of operating a motor vehicle while intoxicated, and additionally, causing felonious harm and death to passengers while doing so.

¶19 Shortly before 3:25 a.m., Pierangeli swerved on the roadway “multiple times” and was driving at a high rate of speed before going “airborne,” “run[ning] off the road” and striking a building so directly that the vehicle “protruded pretty deeply into [the] concrete block structure.” At a stoplight just moments before, a passenger in the vehicle “was hanging out the window and ... blowing kisses” at an ambulance driver who subsequently responded to the crash of this same vehicle. The passenger was also “doing some other types of unusual things.” The conduct of the passenger and the swerving of the driver, especially occurring not long after bar closing time, *see State v. Post*, 2007 WI 60, ¶36, 301 Wis. 2d 1, 733 N.W.2d 634 (stating that time of night “does lend some further credence” to an officer’s suspicion of intoxicated driving), gave law enforcement significant reason to believe the individuals in the vehicle, including the swerving

driver, were impaired by drugs or alcohol. Indeed, as the sergeant indicated based on his third shift experience, drivers who crash shortly after bar closing time like this “historically ... have some sort of impairment involving alcohol or drugs.”

¶20 Add to this evidence the otherwise inexplicable nature of the crash—the vehicle leaving the roadway and striking a large, immovable object, the building—and the totality of the circumstances here met the probable cause threshold; guilt was “more than a possibility.” See **Paszek**, 50 Wis. 2d at 625. Absent some significant cause, like extremely bad weather or road conditions, sober individuals do not just leave the roadway, go airborne, and crash so directly into a concrete building as to “protrude[] deeply into” it. No evidence was presented of bad weather, bad road conditions, or any other possible cause. The most reasonable inference as to the cause of the crash, particularly at this time of night, was impairment by either alcohol or drugs.¹

¶21 Probable cause determined and Pierangeli’s unconscious state undisputed, we must conclude under **Mitchell** that the blood draw here was constitutional unless Pierangeli has shown “both ‘that his blood would not have been drawn if police had not been seeking BAC information,’ and ‘that police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties.’” See **Mitchell**, 404 Wis. 2d 103, ¶12 (citation omitted).

¹ There was testimony presented by the “paramedic [l]ieutenant” from the Kenosha Fire Department that a co-worker smelled alcohol emitting from Pierangeli. We do not consider this evidence in our probable cause determination, as nothing in the testimony indicates law enforcement became aware of the co-worker’s knowledge on this point prior to the blood draw. See **State v. Rissley**, 2012 WI App 112, ¶19, 344 Wis. 2d 422, 824 N.W.2d 853 (“[U]nder the collective knowledge doctrine, ‘[t]he police force is considered as a unit and where there is police-channel communication to the arresting officer and he acts in good faith thereon, the arrest is based on probable cause when such facts exist *within the police department*.’” (emphasis added; citation omitted)).

We need go no further than the first point, as the evidence clearly showed that the hospital staff drew Pierangeli's blood for its own purposes in treating him.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2023-24).

